

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

FREDERICK E. SCHUCK, #R6254

PETITIONER

VERSUS

CIVIL ACTION NO. 1:04-CV-853-DMR-JMR
USCA No. 07-60785

RONALD KING and JIM HOOD

RESPONDENTS

CERTIFICATE OF APPEALABILITY

A notice of appeal having been filed in the above captioned habeas corpus case [Doc. No. 41 as to Doc. No. 39 Order on Motion for Reconsideration], in which the detention complained of arises out of process issued by a state court pursuant to 28 U.S.C. § 2254 or the detention arises out of a judgment and conviction in federal court which is being challenged pursuant to 28 U.S.C. § 2255, the court, considering the record in the case and the requirements of 28 U.S.C. § 2253 and Rule 22(b) of the Federal Rules of Appellate Procedure, hereby finds that:

Part A

☐ A certificate of appealability should issue. (See reasons below.)

☒ A certificate of appealability should **not** issue. (See reasons below.)

This hereby **DENIES** the Motion of the Petitioner for a certificate of appealability to issue [Doc. No. 42].

Part B

(for non-CJA pauper cases only)

☐ The party appealing is a pauper.

☒ The party appealing is not a pauper. (See reasons below.)

This hereby **DENIES** the Motion of the Petitioner for Leave to Appeal *in forma pauperis* [Doc. No. 45] as in said motion/unsigned affidavit it is clear the Petitioner has the ability to pay the one-time \$445 filing fee to this Court (not again at the United States Court of Appeals for the Fifth Circuit); **FURTHERMORE, IT IS HEREBY ORDERED that in order for the Petitioner's appeal process to proceed, he must pay said appeal fee of \$455.00 to this Court within twenty days of the entry of this Order;** that is, this Court cannot take the fee out of the Petitioner's inmate account as requested [Doc. 44]. This Court also hereby **DENIES** the Motion of the Petitioner to Stay Filing Fees and Stay Notice of Appeal [Doc. No. 46.]

REASONS FOR DENIAL OF CERTIFICATE OF APPEALABILITY:

The Petitioner has failed to make a substantial showing of the denial of a constitutional right as set forth in 28 U.S.C. §2253(c)(2); Petitioner's arguments for Reconsideration presented in his motion did not constitute legitimate reasons warranting relief under Rule 60(b)(3) or 60(b)(4). Furthermore, Petitioner's claims in his habeas petition were procedurally barred or otherwise denied on the merits by the state court pursuant to an independent and adequate state law, and the state court's decisions did not result in an unreasonable application of clearly established federal law.

Date: November 2, 2007

S/ DAN M. RUSSELL, JR.
UNITED STATES DISTRICT JUDGE